IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1163 of 2007

K.Palani .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.G.Natarajan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner/detenu, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to his detention order under Tamil Nadu Act 14 of 1982 made in Ref.No.309/2007/BDFGISSV/2007, dated 12.7.2007 on the file of the second respondent herein, to quash

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the same and to consequently direct the respondents to produce him, now confined in Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

3.1. The order of detention dated 12.7.2007 was passed on the basis of ground case in Crime No.69 of 2007 for alleged commission of offences under Sections 4(1)(i)(aaa), 4(1)(b) and 4(1)(A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 20.6.2007 when the Inspector of Police, Chennai City Police attached to Prohibition Enforcement Wing, Madhavaram Unit along with his police party proceeded on prohibition raids at Puzhal area, at Kavankarai, they noticed the detenu standing with a white plastic gunny bag at Thandalkazhani bus stop and on noticing the police party, he tried to escape, but was chased and surrounded by the police party. The gunny bag was searched and it was found to contain 500 numbers of 50 ml. duplicate Karnataka I.D.Arrack sachets. The contraband was seized. As per the confession of the detenu, the police party proceeded to the factory and also seized the contraband available there. The samples of arrack seized were sent for chemical analysis and the Professor, Department of Forensic Medicine, issued a certificate to the effect that rectified spirit as well as I.D. Arrack are poisonous substances and consumption of the same mixed with atropine will cause danger to the life of the general public.

3.2. Apart from the above, the detaining authority also took note of an four adverse case pending against the detenu in Crime No.464 of 2003 registered on the file of Prohibition Enforcement Wing Madhavaram Unit for the occurrence said to have taken place on 9.9.2003 for the offences of alike nature.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The learned counsel for the petitioner challenges the order of detention on the ground of non-application of mind on the part of the detaining authority to the fact that while the detenu was arrested on 20.6.2007 at 1700 hours and the First Information Report was registered only at 2300 hours, in the arrest report the Crime No.69 of 2007 is stated.

6. From the materials available on record, as contended by the

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learned counsel for the petitioner, it is evident that the detenu was arrested on 20.6.2007 at 1700 hours and the First Information Report was registered at 2300 hours, but in the arrest report the Crime No.69 of 2007 is stated. There is no explanation on the part of the detaining authority as to how the crime number came to be mentioned in the arrest report, which was six hours earlier than the lodging of the F.I.R. The police have not filed any affidavit as to how they got the crime number, viz., by using wireless or cellphone to contact the relevant police station to ascertain the crime number. The absence of any such affidavit filed on behalf of the sponsoring authority and the failure of the detaining authority to get an explanation on this aspect vitiates the order of detention.

For the aforesaid reason, the petition is liable to be allowed and hence, the same is allowed. The order of detention dated 12.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1.The Secretary to Government
Home, Prohibition and Excise Department
State of Tamilnadu
Secretariat, Chennai-9.

2.The Commissioner of Police
Greater Chennai
Egmore, Chennai-600 008.

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3.The Superintendent,
Central Prison,Puzhal, Chennai.
(In duplicate for communicate to detenu)

4.The Joint Secretary to Government,
Public (Law and Order) Fort St.George,
Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Natarajan,Advocate Sr 67166

KA (CO)
km/21.11.

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